

Document No. 5087
ADOPTED
SEPTEMBER 15, 1988

TO: BOSTON REDEVELOPMENT AUTHORITY
AND STEPHEN COYLE, DIRECTOR

FROM: ANTHONY WILLIAMS, ASSISTANT DIRECTOR FOR
NEIGHBORHOOD HOUSING AND DEVELOPMENT, AND
ROBERT RUSH, SENIOR PROJECT MANAGER

SUMMARY: THE BOSTON REDEVELOPMENT AUTHORITY AND BOSTON HOUSING PARTNERSHIP II PROPOSE TO ENTER INTO A MEMORANDUM OF AGREEMENT UNDER WHICH HERITAGE TRUST SUPPLEMENTAL PAYMENTS PLEDGED IN THE JUNE 26, 1986 LAND DISPOSITION AGREEMENT SHALL BE DISPERSED TO THE BOSTON HOUSING PARTNERSHIP II.

On June 26, 1986, Heritage Residential Realty Trust and the Heritage Commercial Realty Trust (the commercial developer) entered into a Land Disposition Agreement (LDA) with the Authority which provided that Supplemental Payments were to be made to the Boston Housing Partnership II (BHP II) for a joint public-private neighborhood housing program in addition to Linkage payments (pledged in the December 18, 1985 DIP Agreement). The previously agreed upon sum of \$555,000 was to be made in twelve (12) equal installments of \$46,250. The first payment of \$46,250 is currently being held in escrow pending an agreement regulating the use of the Supplemental Payments to BHP II.

The proposed Memorandum of Agreement between the Authority and BHP II would tender the payment currently held in escrow and facilitate the right of BHP II to receive the remainder of the Supplemental Payments as provided for in the executed LDA. The first seven (7) payments are to be used exclusively for the benefit of the housing development by paying down the Public Facilities Department BUILD Loan. The subsequent five (5) payments will be utilized with the advice and consent of the Authority.

It is requested, therefore, that the Memorandum of Agreement which is consistent with the previously approved LDA between BHP II and the Authority be approved.

An appropriate vote follows:

VOTED: That the Director be and hereby is authorized to enter into the Memorandum of Agreement substantially in the form as attached providing for Supplemental Payments to BHP II for a joint public-private neighborhood housing program and that the Director is forthwith authorized to execute such further documents as are necessary to implement the Agreement.

MEMORANDUM OF AGREEMENT REGARDING SUPPLEMENTAL PAYMENTS
OF THE REDEVELOPER
BY AND BETWEEN
THE BOSTON REDEVELOPMENT AUTHORITY
AND THE
BOSTON HOUSING PARTNERSHIP, INC.

THIS AGREEMENT entered into this _____ day of _____, 1988 by and between the Boston Redevelopment Authority, a public body politic and corporate, duly organized and existing pursuant to Chapter 121B of the General Laws of the Commonwealth of Massachusetts, having its usual place of business in City Hall, One City Hall Square, Boston. MA (hereinafter referred to as the "Authority"), and the Boston Housing Partnership, Inc., a non-profit corporation duly organized and existing pursuant to the General Laws of Massachusetts, having its usual place of business at 99 Chauncey St., P.O. Box 90, Boston, MA., (hereinafter referred to as "BHP").

WITNESSETH THAT:

WHEREAS, the Heritage Residential Realty Trust and the Heritage Commercial Realty Trust ("Commercial Redeveloper") entered into a Land Disposition Agreement ("LDA") with the Authority on June 26, 1986 for good and significant consideration; and

WHEREAS, in Section 5.03 of said LDA the Commercial Redeveloper agreed to make a Linkage Payment in accordance with the DIP Agreement dated December 18, 1985; and

WHEREAS, in section 5.04 of said LDA the Commercial Redeveloper agreed to contribute Supplemental Payments to the Boston Housing Partnership for a joint public-private neighborhood housing program in addition to said Linkage Payment; and

WHEREAS, in Section 5.04 these Supplemental Payments are agreed to consist of the difference between One Million Dollars (\$1,000,000.) and the amount of the Linkage Payment, which difference is agreed by the Parties to be Five Hundred and Fifty-Five Thousand Dollars (\$555.000); and

WHEREAS, said Supplemental Payments shall be made in twelve (12) equal annual installments of \$46,250. at the same time prescribed for the Linkage Payments pursuant to the DIP Agreement; and

WHEREAS, the Commercial Redeveloper has already made one Supplemental Payment of \$46,250. to the Authority which is currently being held in escrow pending an Agreement regulating the use of the Supplemental Payments to be made to the Boston Housing Partnership; and

WHEREAS, the Authority is a necessary party to said Agreement regulating said payments by virtue of the obligation arising from the Land Disposition Agreement between the Authority and the Commercial Redeveloper; and

WHEREAS, the Authority concurs with the payment of the Supplemental Payments to the Boston Housing Partnership ("Recipient") for the benefit in part of the Granite Properties, Inc., ("Housing Development") as described in the BHP Collateral Fund Agreement between the Neighborhood Housing Trust (NHT), the City of Boston acting by and through its Public Facilities Commission (PFC), the Shawmut Bank, N.A. (Shawmut), BHP II Limited Partnership (BHP II), and the Boston Housing Partnership, Inc. (BHP), dated _____, wherein (in part) the Recipient desires that the payment held in escrow and the subsequent six (6) payments be used to pay down the PFC BUILD Loan;

NOW, THEREFORE, the Parties hereto do mutually agree as follows;

SECTION 1. OBLIGATIONS OF THE AUTHORITY

1) The Authority hereby agrees to tender to Recipient the payment currently held in escrow, and to facilitate the right of the Recipient to receive the remainder of the Supplemental Payments under the LDA, and the Authority hereby confirms that Recipient shall be entitled to reassign the rights to receive the Supplemental Payments to any Institutional Lender of Recipient in order to enable Recipient to accelerate the availability of the Supplemental Funds.

In furtherance of the foregoing, the Authority hereby agrees as follows:

a) within seven (7) days of the date hereof, the Authority will made available to Recipient the Supplemental Payment of \$46,250. tendered by the Commercial Redeveloper to the Authority and currently held in escrow; and

b) The Authority hereby confirms the tender of all future Supplemental Payments to be made by the Commercial Redeveloper to the Recipient pursuant to the LDA, provided, however, that the first seven (7) payments (or the present value thereof) are to be used exclusively for the benefit of the Housing Development by paying down the PFC BUILD Loan pertaining thereto, and the subsequent five (5) payments (or the present value thereof) will not be utilized without the advice and consent of the Authority.

SECTION 2. OBLIGATIONS OF THE RECIPIENT

1) Recipient hereby confirms its obligation, as set forth in the BHP Collateral Fund Agreement (a copy of which is attached hereto and incorporated by reference herein) to use the first seven (7) Supplemental Fund payments (or the present value thereof) exclusively for the benefit of the Housing Development by paying down the PFD BUILD Loan pertaining thereto.

2) Recipient hereby agrees that Supplemental Funds payments eight (8) through twelve (12) (or the present value thereof) will not be expended without advance notice to and the consent of the Authority, which consent shall not be unreasonably withheld.

3) Recipient shall keep and maintain books, records and other documents relating directly to the receipt and disbursement of Supplemental Payments and/or funds borrowed from an Institutional Lender to which the Recipient has assigned the rights to payment under section 5.04 of the LDA. Recipient shall permit authorized representatives of the Authority to have access to all such books and records for purposes of inspecting, examining, auditing or copying such books, record and other documents.

SECTION 3. NOTICES

All notices or other communication required or permitted to be given under this Contract shall be in writing, signed by a duly authorized officer of the Party, and shall be deemed delivered if mailed, postage prepaid, by registered or certified mail, return receipt requested, to the principal office of the party to which it is directed, which is as follows unless otherwise designed by written notice to the other Parties:

Recipient: Boston Housing Partnership, Inc.
99 Chauncy Street
P.O. Box 90
Boston, MA 02112
ATTN: James P. Luckett

Authority: Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201
ATTN: Director

with copy to: Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201
ATTN: Chief General Counsel

with copy to: Heritage Residential Realty Trust
c/o Druker Company
50 Federal St., Boston MA 02210
ATTN: Ronald Drucker

SECTION 4. TRANSFER OF INTEREST

All rights and interests accorded by this Contract to the Recipient shall not be assigned, delegated, subcontracted, or in any way transferred by the Recipient except pursuant to the provisions of this Contract,

SECTION 5. LIABILITY

No officer, director, agent or employee of the Authority shall have any personal liability for the payment or performance of the Recipient's obligations under this Contract.

SECTION 6. AMENDMENTS

This Contract, or any part hereof, may be amended from time to time hereafter only in writing executed by all the Parties.

SECTION 7. SEVERABILITY

Each and every covenant and condition contained in this Contract is and shall be construed to be a separate and independent covenant and condition. If any term or provision of this Contract, or the application thereof to any person or circumstance, shall to any extent be invalid and unenforceable, the remainder of this Contract, or the application of such terms to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and shall be enforced to the extent permitted by law.

SECTION 8. EXECUTION IN COUNTERPARTS

This Contract may be executed in four (4) counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

SECTION 9. TABLES OF CONTENTS, TITLES AND HEADINGS

The headings of sections, subsections and paragraphs set forth herein are for convenience of references only and are not a part of this Contract and shall be disregarded in construing or interpreting any of the provisions of the Agreement.

SECTION 10. GOVERNING LAW

This Contract shall be governed and construed in accordance with the laws of the United States, the Commonwealth of Massachusetts, and the ordinances, rules, and regulations of the City of Boston.

SECTION 11. SUCCESSORS AND ASSIGNS

Notwithstanding any subsequent amendment to or repeal of Articles 26 and 26A of the Boston Zoning Code, or any court decision having the effect of an amendment to or repeal of Articles 26 or 26A of the Boston Zoning Code as applicable, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto, including, without limitation, the Recipient, the Authority, and any successor owner of all or any portion of the LDA or the Housing Development.

SECTION 12. ENFORCEMENT

The Authority may enforce compliance with or the breach of any of the provisions of this Contract by an action at law or equity in a court of appropriate jurisdiction, including, but not limited to, termination of this Contract, or through other appropriate action. The Recipient shall pay to the Authority all reasonable costs and expenses, including attorney's fees, which may be incurred by the Authority in proceedings brought to enforce compliance, to the extent the Trust or the Administering Agency prevails.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on their behalf by their respective Officers hereunto duly authorized as of the day and year first written above.

WITNESS

BOSTON REDEVELOPMENT AUTHORITY

BY: Stephen Coyle, Director

WITNESS

BOSTON HOUSING PARTNERSHIP, INC.

BY: James P. Lockett, Director

Approved as to form:

Chief General Counsel

LAND DISPOSITION AGREEMENT

BY AND AMONG

**THE BOSTON REDEVELOPMENT AUTHORITY,
THE HERITAGE RESIDENTIAL REALTY TRUST
AND
THE HERITAGE COMMERCIAL REALTY TRUST**

demolish, subtract therefrom, make any additions thereto or extensions thereof or change the materials, design, dimensions, or color thereof, if such reconstruction, demolition, subtraction, addition, extension or change will materially affect the external appearance of the Major Design and Exterior Elements, without the prior written approval of the Authority, which shall not be unreasonably withheld or delayed. In the event the Redeveloper shall fail to comply with the foregoing requirement, the Authority may within a reasonable time after its discovery thereof, direct in writing that the Redeveloper so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended or changed without the prior written approval of the Authority. The Redeveloper shall promptly comply with such a directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition, extension or change until such directive is complied with. Any such reconstruction, demolition, subtraction, addition, extension or change undertaken pursuant to the prior written approval of the Authority shall in all respects be in accordance with and conform to the provisions of the Plan.

Section 5.03: Linkage Payment

The Commercial Redeveloper shall be responsible for a Linkage Payment in the amount calculated in accordance with and subject to the terms and conditions of the DIP Agreement.

Section 5.04: Supplemental Payments of the Redeveloper

In addition to the Linkage Payment, the Commercial Redeveloper agrees to make the following payments (referred to herein as the "Supplemental Payments"):

(a) The Commercial Redeveloper agrees to contribute the difference between One Million Dollars (\$1,000,000) and the amount of the Linkage Payment to the Boston Housing Partnership, Inc., for a joint private-public neighborhood housing program. Such payment shall be made in twelve (12) equal annual installments at the times prescribed in paragraph (c) of Section 5.03 for the payment of installments of the Linkage Payment.

(b) Commencing at initial occupancy (defined herein as occupancy of ninety-five percent (95%) of the Commercial

Component) in the Commercial Component, a per annum contribution of Seventy-Five Thousand Dollars (\$75,000.00) shall be made by the Commercial Redeveloper to an entity to be designated by the Commercial Redeveloper and the Authority for the maintenance and improvement of the Boston Public Garden. Said annual contributions shall be made for the life of the Building, and shall be escalated every three (3) years by a percentage equal to the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) relating to Boston and issued by the Bureau of Labor Statistics of the United States Department of Labor from the date of the then immediately preceding payment until the third anniversary of such date, but in no event by more than five percent (5%). If the Bureau of Labor Statistics discontinues such index, a comparable index shall be chosen by mutual agreement of the parties.

Notwithstanding anything to the contrary contained herein, the obligations contained in this Section 5.04 shall be obligations of the Commercial Redeveloper, and its successors and assigns, and not the Residential Redeveloper, or its successors and assigns, the Authority agreeing to look solely to the former, and not to the latter, for any obligations contained in or arising out of this Section 5.04. The Commercial Redeveloper acknowledges that, subject to the provisions of Section 9.10, this Agreement in general and specifically the provisions of Sections 5.03 and 5.04 are binding and enforceable under contract law upon, and inure to the benefit of the parties, their successors, assigns and legal representatives, notwithstanding amendment or repeal of Article 26 of the Zoning Code or a court decision having the effect of an amendment or repeal of such Article.

ARTICLE 6

INDEMNIFICATION

Section 6.01: Reimbursement of Authority in Respect of Certain Litigation

The applicable Redeveloper shall pay all reasonable costs and expenses, and the amounts of all judgments and decrees, which may be incurred by the Authority in any proceedings brought to enforce the obligations of the applicable Redeveloper set forth in the provisions of this Agreement to the extent the Authority prevails.

